

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

ROBIN PRITCHARD,

Appellant,

v.

DEPARTMENT OF TRANSPORTATION,

Respondent.

) Case No. RED-02-0008

)  
) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and RENÉ EWING, Member. The hearing was held at the Office of the Attorney General in Spokane, Washington, on January 21, 2003. GERALD L. MORGEN, Vice Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Robin Pritchard was present and represented herself *pro se*. Patricia Thompson, Assistant Attorney General, represented Respondent Department of Transportation.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a reduction in pay for neglect of duty, insubordination, and gross misconduct. Respondent alleges that Appellant did not uphold her responsibility as a supervisor to treat employees with respect and dignity, and did not behave in a professional manner.

1.4 **Citations Discussed.** WAC 358-30-170; McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Harper v. WSU, PAB No. RULE-00-0040 (2002).

## II. FINDINGS OF FACT

2.1 Appellant Robin Pritchard is an Office Support Supervisor 2 and permanent employee of Respondent Department of Transportation. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on January 30, 2002.

2.2 By letter dated January 4, 2002, Keith A. Metcalf, Assistant Regional Administrator for Development, notified Appellant of her three-month five-percent reduction in salary from Range 40, Step I to Range 40, Step G, effective February 1, 2002 through May 1, 2002. Mr. Metcalf charged Appellant with neglect of duty, insubordination, and gross misconduct for unprofessional treatment of a subordinate employee. Mr. Metcalf specifically charged Appellant with refusing to acknowledge her new subordinate employee's presence, failed to introduce herself to the employee, and abruptly grabbed papers from the employee's desk.

2.3 Appellant began her employment with the Department of Transportation on January 6, 1998 as a Fiscal Technician and promoted to an Office Support Supervisor 2 in May of 1999 in the Eastern Region Administrative Support Unit in Spokane. Appellant has no prior history of formal or informal corrective or disciplinary actions.

2.4 On November 28, 2001, Appellant and her supervisor, Nancy Peterson, were notified that Gay James, a temporary receptionist under Appellant's direct supervision, had accepted another

1 position and was leaving the agency. Ms. James' last day with the Department of Transportation  
2 was expected to be December 4, 2001.

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4 2.5 Appellant and Ms. Peterson began working together to hire a replacement receptionist, who  
5 would be directly under Appellant's supervision. Appellant requested that the department hire a  
6 new receptionist from a Department of Personnel register. Additionally, Appellant expressed her  
7 desire to avoid hiring friends or relatives of current employees in order to prevent potential conflicts  
8 among co-workers.

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10 2.6 Ms. James recommended that Ms. Peterson consider hiring Nancy Krueger, a former co-  
11 worker of Ms. James, for the receptionist position. Ms. Peterson asked Ms. James to contact Ms.  
12 Krueger and request a completed application for state employment.

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14 2.7 Ms. Krueger submitted her application sometime between November 28, 2001 and  
15 November 30, 2001. Ms. Peterson showed the application to Mr. Keith Metcalf, the Assistant  
16 Regional Administrator for Development, and received his approval to interview Ms. Krueger. Ms.  
17 Peterson interviewed and hired Ms. Krueger as a temporary receptionist during the afternoon of  
18 Friday, November 30, 2001, which was Appellant's normally scheduled afternoon out of the office.

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20 2.8 Appellant was not aware of the hiring recommendation, the request for Ms. Krueger's  
21 application, the interview, or the decision to hire Ms. Krueger. Ms. Peterson left a copy of Ms.  
22 Krueger's application on Appellant's desk, along with a note stating, "I'll talk to you about this  
23 more on Monday. This person is starting at 7:30 a.m. on Monday, December 3. Please take her in  
24 to Karen L. to complete paperwork (Karen knows)."

1 2.9 Ms. Krueger reported to work the following Monday, December 3, 2001. Ms. Krueger met  
2 Ms. James in the parking lot, and they entered the workplace building together. Ms. James  
3 immediately began training Ms. Krueger by showing her around the building and having her listen  
4 while Ms. James answered incoming phone calls.

5  
6 2.10 When Appellant arrived at work a short while later, Appellant noticed Ms. James and Ms.  
7 Krueger at the receptionist desk. Appellant went into her office, set some papers that she had been  
8 carrying onto her desk, and began to check her e-mail. When Appellant returned to the reception  
9 area, Ms. James introduced Appellant to Ms. Krueger. Appellant then returned to her office. At  
10 this point, Appellant discovered the note from Ms. Peterson attached to Ms. Krueger's application.  
11 Appellant realized at that moment that Ms. Krueger had been hired without her knowledge.

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13 2.11 After discovering the note, Appellant looked for Ms. Peterson. Appellant informed Ms.  
14 Peterson that she was very upset that Ms. Krueger had been hired without her knowledge. Ms.  
15 Peterson responded that she and Mr. Metcalf had done Appellant a favor by hiring Ms. Krueger.  
16 Appellant asked Ms. Peterson how to reestablish herself with Ms. Krueger as her supervisor, and  
17 Ms. Peterson responded that Appellant would be the one to train Ms. Krueger. Appellant told Ms.  
18 Peterson that she was unsure how to appropriately train Ms. Krueger since she was not aware of the  
19 job classification level and length of time of Ms. Krueger's employment. Ms. Peterson indicated  
20 that Ms. Krueger had been hired as a temporary Office Assistant and was expected to work for a  
21 period of five months.

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23 2.12 After Ms. Peterson left Appellant's office, Appellant began to cry and had a difficult time  
24 regaining her composure. Appellant was so upset by the situation that she called her doctor to make  
25 an appointment.

26

1 2.13 Appellant needed to have a stack of papers collated and stapled. Seeing that Ms. James was  
2 on the phone, Appellant gave the papers to Ms. Krueger and asked her to complete the task.  
3 Appellant then returned to her office and prepared to leave for her doctor appointment. When  
4 Appellant returned to the reception area to check on the progress of the stapling assignment, she  
5 found Ms. Krueger and Ms. James talking. Appellant told Ms. James and Ms. Krueger that she  
6 needed to leave by 9:00 a.m., and therefore would finish the project herself. Appellant brusquely  
7 took the papers and walked away. Appellant then notified Ms. Peterson that she was sick and  
8 needed to leave for a doctor appointment.

9  
10 2.14 Ms. Krueger did not arrive for work the following morning, December 4, 2001. Ms.  
11 Krueger phoned Ms. Peterson to say she was resigning due to the unprofessional treatment she had  
12 received by Appellant the day before. Ms. Krueger reported that Appellant made her feel  
13 unwelcome, and she was not willing to work in an environment that caused her such discomfort.  
14 Ms. Peterson asked Ms. James and Ms. Krueger to write statements to describe what happened the  
15 previous day. Ms. Krueger hand-delivered her statement later that same day, December 4, 2001.

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17 2.15 Ms. Peterson relayed the events of December 3, 2001 to Mr. Metcalf, the appointing  
18 authority. Mr. Metcalf wrote a pre-disciplinary letter to Appellant dated December 19, 2001, and  
19 gave Appellant the option to meet with him or provide a written response. Appellant provided a  
20 written response to Mr. Metcalf dated January 2, 2002.

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22 2.16 Mr. Metcalf reviewed Appellant's written response, Appellant's training profile, and the  
23 written statements from Ms. James and Ms. Krueger. Mr. Metcalf concluded that Appellant, as a  
24 supervisor, failed to treat a new employee with respect and dignity and should not have taken her  
25 frustration with the hiring process out on the new employee. Mr. Metcalf found that Appellant  
26 expressed no remorse and was not willing to take responsibility for her actions. Mr. Metcalf

1 determined that Appellant's conduct constituted neglect of duty and gross misconduct. After  
2 considering Appellant's response to the charges, he did not find that she presented any mitigating  
3 circumstances for her actions. Mr. Metcalf decided that a reduction in pay was the minimum  
4 discipline necessary to get Appellant's attention and make a change in her behavior.

### 6 **III. ARGUMENTS OF THE PARTIES**

7 3.1 Respondent asserts that Appellant was upset and angry about Ms. Krueger being hired  
8 without her approval, refused to acknowledge Ms. Krueger's presence on her first day at work, and  
9 was not interested in meeting her. Respondent argues that Appellant, as a supervisor, should have  
10 introduced herself to Ms. Krueger. Respondent argues that the reason Ms. Krueger was hired so  
11 quickly and during Appellant's scheduled time off, was so Ms. James could provide two days of  
12 training. Respondent asserts that Appellant, as a supervisor, is held to a higher standard, should  
13 lead by example in promoting a cooperative work environment, and must treat everyone with  
14 respect and dignity. Respondent asserts that Appellant's failure to interact with Ms. Krueger was  
15 neglect of duty. Respondent argues that Appellant engaged in gross misconduct by exhibiting  
16 behavior which caused Ms. Krueger to quit after her first day, and therefore interfered with a hiring  
17 decision and the ability of the new receptionist to perform her work.

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19 3.2 Appellant asserts that she was not rude, and that she did acknowledge Ms. Krueger.  
20 Appellant admits she did not welcome Ms. Krueger to the agency, but points out that she did not  
21 know Ms. Krueger was a new employee under her supervision. Further, Appellant claims her  
22 supervisor failed to communicate with her about the hiring decision. Appellant admits that she  
23 made mistakes. She has been under a great deal of stress during the last year and was not able to  
24 handle the anxiety that this situation caused her. Appellant argues that Ms. Krueger was  
25 interviewed and hired in her absence, which undermined her position as the direct supervisor.  
26 Appellant argues that her punishment was not gradual, progressive, or just. Appellant argues that

1 she should have been given guidance on how to handle similar situations differently in the future  
2 and a warning that stronger action would be taken if she acted inappropriately again.

#### 3 4 **IV. CONCLUSIONS OF LAW**

5 4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

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7 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
8 the charges upon which the action was initiated by proving by a preponderance of the credible  
9 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
10 sanction was appropriate under the facts and circumstances. WAC 358-30-170; [WAC 251-12-  
11 240(1)]; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

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13 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her  
14 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
15 of Social & Health Services, PAB No. D86-119 (1987).

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17 4.4 Insubordination is the refusal to comply with a lawful order or directive given by a superior  
18 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.  
19 Dep't of Social & Health Services, PAB No. D94-025 (1995).

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21 4.5 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to  
22 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant  
23 misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's  
24 interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

1 4.6 Respondent has failed to meet its burden of proving, by a preponderance of the credible  
2 evidence, that Appellant neglected her duties as a supervisor, that she was insubordinate, or that her  
3 actions on December 3, 2001 rose to the level of gross misconduct. When Appellant arrived to  
4 work that morning, she was unaware that Ms. Krueger had been hired to fill the receptionist  
5 position and was a new employee under her supervision. Under the circumstances, Appellant did  
6 not have knowledge of her duty to interact with Ms. Krueger in a supervisor capacity. Although  
7 Mr. Metcalf charges Appellant with insubordination, he does not elaborate on how Appellant's  
8 actions constituted insubordination nor did he testify that Appellant was given a directive with  
9 which she refused to comply. Respondent failed to establish the existence of an order or directive  
10 or that Appellant refused to comply with such a directive. Finally, Respondent has not established  
11 that Appellant's behavior interfered with the agency's ability to carry out its mission. Therefore,  
12 the appeal of Robin Pritchard should be granted, and the reduction in salary should be reversed.

13  
14 **V. ORDER**

15 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Robin Pritchard is granted and  
16 the reduction in salary is reversed.

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18 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

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20 WASHINGTON STATE PERSONNEL APPEALS BOARD

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22 \_\_\_\_\_  
23 Walter T. Hubbard, Chair

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26 René Ewing, Member

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